

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

IN RE: KATHERINE MARIE EDWARDS,

BKY NO: 03-40559

DEBTOR,

ADV. NO: 03-4096

KURT A. EDWARDS,

PLAINTIFF,

KATHERINE MARIE EDWARDS,

DEFENDANT.

**MOTION TO APPROVE AGREEMENT AND ENTER JUDGMENT
OF NONDISCHARGEABILITY**

TO: Defendant above-named and her attorney, David Orenstein, 100 South 5th Street – Suite 1100, Minneapolis, MN 55406.

1. Kurt A. Edwards, Plaintiff in the above-captioned matter, by his undersigned attorney, Thomas W. Van Hon, gives notice of hearing and moves the Court for an order approving the agreement between the parties and entering a judgment that the debt of the Defendant Katherine M. Edwards to Kurt A. Edwards, in the amount of \$30,264.93, is nondischargeable.

2. The Court will hold a hearing on this Motion before the Honorable Nancy C. Dreher, Judge of Bankruptcy Court, United States Bankruptcy Court, in Courtroom 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota, on Wednesday, September 29, 2004 at 10:30 A.M. or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than 10:30 A.M. on Tuesday, September 28, 2004 which is 24 hours before the time set for the hearing. UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. The Court has jurisdiction over the Motion under 28 U.S.C. § 157 and 1334, pursuant to Bankruptcy Rule 5005 and Local Rule 1070-1.

5. Movant requests an Order granting a judgment of nondischargeability pursuant to the parties' agreement.

6. On January 23, 2003, the Defendant filed a petition under Chapter 7 United States Bankruptcy Code. On or about May 28, 2003, the Plaintiff commenced an adversary

proceeding against the Defendant seeking nondischargeability of debts under 11 U.S.C. § 523(a)(5), 11 U.S.C. § 523(a)(15) and 11 U.S.C. § 523(a)(6).

7. The Debtor interposed an answer, and in the course of discovery, the parties reached an agreement, which was reduced to writing and signed by both parties. A copy of the agreement is attached as an exhibit to this motion.

8. The parties contemplated entering into a formal settlement agreement. Although a formal agreement was prepared by Defendant's counsel and the terms were finalized, the Defendant without explanation has failed to sign the agreement.

9. The agreement provides for periodic payments on the part of the Defendant and provides for a discount of the total debt if the payments are made.

10. Defendant's payments were deferred under the agreement and the first payment was due February 29, 2004 in the amount of \$100.00 per month and in the amount of \$100.00 for successive months. The agreement provides that if the Defendant fails to make the settlement payments as provided, the Plaintiff has the right to a nondischargeable judgment against the Defendant in the amount of \$30,264.93, less any payments made to the date of default. The agreement also provided that the payments could be reduced to \$50.00 per month, for up to 12 months, in the event of a documented medical disability. No report of disability has been furnished. Therefore, payments of \$100.00 per month were due under the agreement on February 29, 2004.

11. Defendant has not made any payments pursuant to the agreement.

12. Defendant has not paid any current support since her case was filed, except that \$75.00 was withheld from Defendant's wages and paid to Plaintiff on or about August 9, 2004.

WHEREFORE, Movant requests that this Court enter an Order providing as follows:

1) Entering judgment against the Defendant in favor of the Plaintiff in the amount of \$30,264.93.

2) Finding the obligation of the Defendant and in favor of Plaintiff is nondischargeable under 11 U.S.C. § 523.

DATED: This 12th day of August, 2004.

/e/ Thomas W. Van Hon
THOMAS W. VAN HON #165189
Attorney for the Plaintiff
19 SE Second Avenue
P.O. Box N
Fairfax, MN 55332
Telephone: (507) 426-7339

VERIFICATION

I, Kurt A. Edwards the Plaintiff above named, declare under penalty of perjury that the foregoing is and correct according to the best of my knowledge, information and belief.

Dated this 12th day of August, 2004.

Kurt A. Edwards
Kurt A. Edwards

AGREEMENT – TERM SHEET

1. In full settlement of the adversary proceeding, Kathy Edwards shall pay the sum of \$15,000 as follows: \$100 each month commencing February 29, 2004 and \$100 on the last day of each successive month thereafter until the \$15,000 settlement amount is paid in full; provided, however, that if Kathy Edwards obtains full-time employment (40 hours per week) sooner than February 29, 2004 she shall begin making the \$100 monthly payments on the 29th of the month following the month in which she starts her employment; provided further that if Kathy Edwards obtains part-time employment (at least 20 hours per week) before February 29, 2004, she shall make monthly payments of \$50 each month beginning in the month following the month in which she starts her part-time job and ending January 31, 2004, at which time the payments will increase to \$100 each month as provided above. Notwithstanding anything in this paragraph to the contrary, if Kathy Edwards provides Kurt Edwards or his attorney with a medical report verifying that she is physically disabled and unable to work, the amount of the monthly payments shall be reduced to \$50 for no more than 12 months from the date that she provides the report (the “12 month Disability Period”), and, thereafter, payments shall be \$100 per month. The 12 Month Disability Period shall only be available to Kathy Edwards once during the term of this Agreement.

2. Kathy Edwards shall make the first \$6,500 of monthly payments to Renville County Child Support and these payments shall be applied to reduce the current arrearage of \$6,487. Thereafter, all remaining payments, in the total amount of \$8,500, shall be paid into a trust that shall be established for the benefit of the parties’ daughter, Hannah (the “Trust”).

3. The Trust will provide that all trust funds are to be used for educational purposes, including but not limited to camps, school trips, school tuition, school books, post-secondary education living expenses, or other school related expenses. Kurt Edwards shall be the sole trustee of the Trust. The trust account will be a mutual fund account. The Trust will terminate when Hannah reaches the age of 25, at which time all unused funds will be distributed to Hannah. In the event of Hannah's death prior to the termination of the Trust, all remaining trust funds shall be immediately distributed to Kurt Edwards. A copy of the monthly account statements shall be mailed to Kathy Edwards. With respect to every withdrawal of Trust funds, Kurt Edwards shall provide Kathy Edwards with written receipts reflecting the use of the funds and, if not evident from the receipts, identify the educational purpose for which the funds were used.

4. If Kathy Edwards fails to make the settlement payments when and as provided above, then Kurt Edwards shall have the right to confess judgment against her in state district court, in the amount of \$30,264.93 less all payments that Kathy Edwards has made up to the date of default and such judgment shall be nondischargable in bankruptcy.

5. Nothing in this Agreement shall be construed as an admission that Kathy Edwards has committed a fraud.

6. Nothing in this Agreement shall be construed as a waiver of the right of Kurt Edwards to collect any child support payment that has accrued after the date that Kathy Edwards filed her bankruptcy; provided that, so long as Kathy Edwards is making the settlement payments

as provided herein, Kurt Edwards shall take no steps to collect any child support payments that are in arrears as of the date of this Agreement and will notify Renville County Child Support that it shall take no such steps with respect to all delinquent child support payments accruing up to and including September 1, 2003.

7. Any failure of Kathy Edwards to make child support payments from the date of this Agreement forward ("Future Child Support Payments") shall not constitute a default in this Agreement. Nothing herein shall be construed to limit the rights and remedies available to Kurt Edwards' to collect such Future Child Support Payments.

8. In the event that Kurt Edwards breaches the Trust by using any trust funds for purposes beyond the scope of the Trust, or breaches this Agreement, then all obligations of Kathy Edwards to make further payments of the settlement amount shall be terminated. This remedy shall be in addition to all other rights and remedies available for breach of the Trust or this Agreement.

9. This Agreement shall be documented in a formal Settlement Agreement.

Kurt A. Edwards
Kurt A. Edwards

9-11-03
Date

Katherine M. Edwards
Katherine M. Edwards

Sept. 11, 2003
Date

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

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DEBTOR,

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KURT A. EDWARDS,

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KATHERINE MARIE EDWARDS,

DEFENDANT.

ORDER

This matter came on for hearing before the undersigned on September 29, 2004 on Plaintiff's Motion to Approve Agreement and Enter Judgment of Nondischargeability. Appearances were noted on the record.

Based on the arguments of counsel and all of the documentation and records available to this Court,

IT IS HEREBY ORDERED:

1. Judgment is entered against the Defendant in favor of the Plaintiff in the amount of \$30,264.93.

2. The obligation of the Defendant and in favor of Plaintiff, in the amount of \$30,264.93, is nondischargeable under 11 U.S.C. § 523.

Dated this _____ day of September, 2004.

BY THE COURT:

Hon. Nancy C. Dreher
Judge of Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
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CERTIFICATE OF SERVICE

I, Cindy D. Fahey, declare under penalty of perjury that on September 2, 2004, I mailed copies of the attached **Motion to Approve Agreement and Enter Judgment of Nondischargeability** and **proposed Order** by first class mail postage prepaid to each entity named below at the addresses numbers stated below for each entity.

David Orenstein
Attorney at Law
100 South 5th St. - Suite 1100
Minneapolis, MN 55406

Katherine Marie Edwards
80555 Co. Rd. 13
Olivia, MN 56277

Dated September 2, 2004.

Cindy D. Fahey